IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

MFA.No. 888 of 2000(B)

OPMV.597/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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APPELLANT/APPLICANT:

S.SANTHOSH KUMAR,S/O.SIVARAMAKURAP,
AGED 30 YEARS, RESIDING AT KAMALA NIVAS, MANNAMCHERRI VILLAGE, ALAPPUZHA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENTS/RESPONDENTS:

1.SIMI,D/O.SHAMSUNEESA,H.P.6/290,SMRITHI,
NEERAZHI LANE, ULLOOR PANCHAYAT,
CHERUVACKAL VILLAGE, THIRUVANANTHAPURAM.

2.K.S.SHOWKATH HUSAIN, SALMA COTTAGE, T.C.9/86, S.S.KOVIL STREET, JAWAHAR NAGAR P.O., THIRUVANANTHAPURAM.

3.UNITED INDIA INSURANCE COMPANY, THIRUVANANTHAPURAM.

BY ADV. SRI.P.PARAMESWARAN NAIR FOR R1
SMT.SREELATHA PARAMESWARAN NAIR FOR R2
SRI.THOMAS MATHEW NELLIMOOTTIL FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2007 , ALONG WITH MFA NOS. 663 OF 2001 & MFA NO. 664 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.888 of 2000 &
663, 664 OF 2001

Dated 14th December, 2007

JUDGMENT

Koshy,J.

Appellant petitioner met with an accident while he was riding a motor byke. According to the claimant, scooter driven by the 1st respondent owned by the 2nd respondent and insured by the 3rd respondent hit the motor byke driven by him as it was driven in a negligent manner. He claimed a compensation of Rs.4,50,000/-. Claim was considered along with the claim filed by the rider and pillion rider of the scooter the offending vehicle in these claim petitions. Tribunal found that both riders were equally negligent and responsible for the accident. Since the appellant challenges the findings regarding contributory negligence, he filed three appeals challenging the above common award. Tribunal noticed that only appellant in this case was charge sheeted by the police. It is contended by the appellant that since the driver of the offending vehicle was a relative of the I.G. of

Police, police records were manipulated and he filed a private complaint and he was acquitted in the criminal case. But the evidence shows that the front portion of both vehicles were damaged. Tribunal has given valid reasons for finding that both drivers were equally negligent. We are of the view that if any of the drivers were vigilant, accident could have been averted. Therefore we see no ground to interfere in the findings of negligence and apportionment of negligence equally between the riders of motor cycle and scooter.

2. With regard to quantum of compensation, tribunal has calculated compensation as Rs.1,11,200/- and then 50% was deducted and balance was directed to be deposited with interest and costs. It is the case of the petitioner that at the time of accident he was only 24 years old and he was getting a monthly income of Rs.3,300/- (Rs.1,500/- as basic salary and Rs.60/- as daily batta). Ext.A16 certificate was produced . It shows that after two months of the accident, he was unable to do any work and his service was terminated. That will not show that he was permanently disabled. He was not able to

report for duty within two months and private employer terminated his services. Tribunal more or less accepted the certificate and fixed his monthly income at Rs.3,000/-. We are of the opinion that no enhancement is required in the monthly income fixed by the tribunal even though it was vehimentaly contended that tribunal ought to have taken into account future prospects in life. With regard to the disability, disability due to surgery in the liver as certified by the Assistant Professor of Surgery in the Medical College Hospital (Ext.A7) is as follows:

> "Santhoshkumar, aged 24 years, Kamala Nivas, Kalavoor, Alleppey, was admitted at Medical College Hospital, Thiruvananthapuram, with I.P.No.790900 on 6.1.1996. The alleged cause was collision with a bike while riding on a bike, on 6.1.1996 at 1.30 p.m. near Palayam. He was referred from General Hospital, Thiruvananthapuram. At the time of admission he had abdominal rigidity and distension. Contused abrasion over (R) lower thorax. Abdominal paracentesis showed blood. So patient was operated. Emergency laparatomy showed intraperitonial bleeding and extensive laceration of the (R) lobe of liver. Bleeding was controlled by hepatic artery ligation and suturing of liver. Repeated blood transfusion was done. X-Ray (R) Foot showed fracture of

2nd and 3rd metatarsal which was treated with B.K.Slab. He was discharged on 17.1.1996.

He was seen periodically for abdominal pain and vomiting. His condition was assessed on 20.6.1997 and found to have attacks of abdominal pain, feeling of fullness and abdominal distension.

In view of the above findings his permanent disability is assessed as follows:-

Abdominal distension, Abdominal pain and vomiting – 12% (twelve percentage)

For orthopedic disability patient is advised to consult orthopedic department.

The Orthopaedic Surgeon issued Ext.A5 certificate. The above certificate reads as follows:

xxx xxx xxx

The injuries as per the reference are Liver Injury and fracture of 2, 3 Metatarsals (R) foot.

As examined today patient has pain and stiffness of (R) foot. Clinical and radiological examination shows fractures well united. Stiffness of tarsometatarsal and metatarsophalangal joints of foot (R) and mild residual swelling of fore foot region.

> For the above, his permanent total disability (considering body as a whole) is estimated as Ten Percent (10%).”

Ext.A6 certificate issued by Orthopaedic Surgeon shows that apart from the liver injury he had fracture of 2, 3 Metatarsals right foot and fracture was well united. But he has reported pain and stiffness and mild residual swelling of forefoot region and certified 10% as orthopaedic disability considering body as a whole. Doctor was not examined. We are of the opinion that 10% disability assessed for orthopaedic disability with regard to whole body is on the high side as fracture was well united even though there is some disability due to fracture and only 3% permanent disability can be assessed for the orthopaedic disability as it may cause mild swelling in future also.

Considering liver injury and fracture of foot, we are of the opinion that compensation should have been awarded for 15% permanent disability. If that be so, additional compensation

to be calculated is Rs.55,600/- and 50% has to be deducted for contributory negligence. So the additional compensation payable to the appellant will be Rs.27,800/- over and above the decreed amount. The above compensation should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit. On deposit of the above amount, appellant is allowed to withdraw the same. All the appeals are disposed of accordingly.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.888 of 2000 &
663, 664 OF 2001

JUDGMENT

Dated 14th December, 2007